ATTORNEY FOR APPELLANT:

ANTHONY S. CHURCHWARD
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General Of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

ZACHARY A. CARR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0703-CR-100
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0610-FC-219

October 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a guilty plea, Zachary A. Carr appeals his sentence for forgery, a Class C felony. Carr raises the sole issue of whether his sentence is inappropriate given the nature of the offense and his character.[1] Concluding that his sentence is not inappropriate, we affirm.

Facts and Procedural History

On December 22, 2005, Carr presented a check made out to him, purportedly by Matthew J. Cassady, to Three Rivers Federal Credit Union in Allen County. Carr admitted during his guilty plea hearing that he presented this check for payment with the intent to defraud either Cassady or Three Rivers. This check had been stolen in a burglary. On October 3, 2006, the State charged Carr with forgery, a Class C felony, and receiving stolen property, a Class D felony. On November 1, 2006, Carr appeared with counsel, entered a plea of not guilty, and requested a jury trial, which the trial court scheduled for February 13, 2007. On February 1, 2007, Carr pled guilty to forgery pursuant to a plea agreement. In exchange for Carr's guilty plea, the State dropped the receiving stolen property count. The plea agreement allowed sentencing to be left to the trial court's discretion except that the executed portion of Carr's sentence was not to exceed four years, the advisory sentence for a Class C felony, see Ind. Code § 35-50-2-6. The trial court accepted the plea, ordered a

[1] Carr's appellate brief also implies that he is arguing the trial court abused its discretion in weighing the aggravating and mitigating circumstances. See Appellant's Brief at 10 (arguing that the mitigating circumstances should have been given greater weight). However, after Carr filed his appellate brief, our supreme court held that a trial court can no longer abuse its discretion in weighing the aggravating and mitigating circumstances. See Anglemyer v. State, 868 N.E.2d 482, 492 (Ind. 2007). We will consider Carr's arguments relating to the relative weight of the aggravating and mitigating circumstances in our analysis of the appropriateness of his sentence.

presentence investigation report, and scheduled a sentencing hearing.

On February 17, 2007, the trial court held the sentencing hearing, at which it made the following statement:

> Court does find aggravating circumstances with your criminal history and failed efforts at rehabilitation. 1986 through 2006, you've accumulated five (5) misdemeanors and eight (8) felony convictions. You've received parole and been on parole a couple of times. Twice they have filed parole violations against you. Twice suspended sentences and misdemeanor cases have been revoked, and you were on parole at the time of this offense out of Marion County. Court does find mitigating circumstances with your plea of guilty and acceptance of responsibility, and the self-reported substance abuse that you've shared with Ms. Jackson, the PSI writer. Court finds that the aggravating circumstance of your criminal history and failed efforts at rehabilitation are balanced by your plea of guilty and acceptance of responsibility.

Sentencing Transcript at 12-13. The trial court then sentenced Carr to four years executed with the Department of Correction. Carr now appeals.

Discussion and Decision

When reviewing a sentence imposed by the trial court, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We have authority to "revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). We must examine both the nature of the offense and the defendant's character. See Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When conducting this inquiry, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007)

In regard to the nature of the offense, we agree with Carr that there seems to be nothing about Carr's offense to distinguish it from the garden-variety forgery. True, the check he presented was the subject of a burglary, but there is no indication that Carr took part in this burglary. Also, the amount involved, roughly one hundred and fifty dollars ($150.00), is not particularly large. However, Carr has failed to point to anything regarding his crime that mitigates its seriousness. We are not convinced that the nature of the offense renders the four-year advisory sentence inappropriate.

In regard to Carr's character, he has a fairly extensive criminal history, consisting of eight felony convictions and five misdemeanor convictions. Carr did not include the presentence report in his appendix,[2] so we do not know the precise nature of these convictions. However, Carr's trial counsel indicated at the sentencing hearing that "most of his crimes relate to either drugs or property offenses." Sentencing Tr. at 4. The weight given to a defendant's criminal history "is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). Carr's criminal history, consisting of thirteen previous convictions, at least some of which are property offenses and therefore related to the

[2] Carr's failure to include the presentence report has somewhat hindered our review of his sentence, as such a report is inherently important to our analysis of the sentence's appropriateness. See Perry v. State, 845 N.E.2d 1093, 1094 n.2 (Ind. Ct. App. 2006), trans. denied ("[T]he presentence report is a vital document that should be included in the appendix in any appeal that raises sentencing issues."); Ind. Appellate Rule 50(B)(1)(d) (an appellant's appendix should include any excerpts from the record "that are important to a consideration of the issues raised on appeal"). We also note that the State could have filed an appendix including this presentence report. See Niemeyer v. State, 865 N.E.2d 674, 676 (Ind. Ct. App. 2007) (citing Ind. Appellate Rule 50(B)(2)).

instant offense, clearly comments negatively on Carr's character.

Further, Carr committed the instant offense while on parole, and has previously violated parole and had suspended misdemeanor sentences revoked. These circumstances also comment negatively on Carr's character. Cf. Cox v. State, 780 N.E.2d 1150, 1160 (Ind. Ct. App. 2002) (recognizing that a trial court may consider past probation violations as an aggravating circumstance); Hall v. State, 769 N.E.2d 250, 255 (Ind. Ct. App. 2002) (holding that trial court properly considered fact that defendant was on parole at the time of the offense as an aggravating circumstance).

Carr argues that his sentence is inappropriate based on the fact that he entered a guilty plea and that he has a history of substance abuse. We recognize that a guilty plea normally comments positively on a defendant's character, as the plea indicates a willingness to take responsibility for one's actions. See Cloum v. State, 779 N.E.2d 84, 90 (Ind. Ct. App. 2002). However, in exchange for Carr's guilty plea, the State dropped a felony charge and capped the executed portion of Carr's sentence at four years. Because Carr received a benefit in exchange for his guilty plea, it may be viewed as more of a pragmatic decision than an acceptance of responsibility. See Fields v. State, 852 N.E.2d 1030, 1034 (Ind. Ct. App. 2006), trans. denied (noting that the defendant "received a significant benefit from the plea, and therefore it does not reflect as favorably upon his character as it might otherwise"). With regard to Carr's history of substance abuse, Carr has wholly failed to explain how his drug habits comment favorably on his character. We believe that Carr's drug use does not comment favorably on his character in any respect. See Reyes v. State, 848 N.E.2d 1081,

1083 (Ind. 2006) (considering defendant's drug use in declining to revise sentence under Rule 7(B)); Roney, 872 N.E.2d at 199 (recognizing that a trial court may properly consider a history of substance abuse as an aggravating circumstance).

Based on Carr's character, as evidenced by his extensive criminal history and violations of parole and probation, we cannot say that his four-year advisory sentence is inappropriate.

Conclusion

We conclude that Carr's four-year sentence is not inappropriate given the nature of the offense and his character.

Affirmed.

KIRSCH, J., and BARNES, J., concur.